

# Exhibit 26

THOMAS BARDEN  
Keith Fischer, et al. vs GEICO

August 08, 2024

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<p>1</p> <p>2 IN THE UNITED STATES DISTRICT COURT</p> <p>3 FOR THE EASTERN DISTRICT OF NEW YORK</p> <p>4 - - - - - )</p> <p>5 KEITH FISCHER, MICHAEL O'SULLIVAN, )</p> <p>6 JOHN MOESER, LOUIS PIA, THOMAS ) Case No.:</p> <p>7 BARDEN, CONSTANCE MANGAN, and ) 2:23 Civ. 2848</p> <p>8 CHARISE JONES, individually and ) (GRB) (ARL)</p> <p>9 on behalf of all others similarly )</p> <p>10 situated, )</p> <p>11 Plaintiffs, )</p> <p>12 - v - )</p> <p>13 GOVERNMENT EMPLOYEES INSURANCE )</p> <p>14 COMPANY d/b/a GEICO, )</p> <p>15 Defendant. )</p> <p>16 - - - - - )</p> <p>17</p> <p>18 VIDEOTAPED DEPOSITION OF THOMAS BARDEN</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Reported by:</p> <p>24 Kim M. Brantley</p> <p>25 Job No: J11541508</p>	<p>1 THOMAS BARDEN</p> <p>2 APPEARANCES CONTINUED:</p> <p>3 On behalf of the Defendant GEICO:</p> <p>4 DUANE MORRIS, LLP</p> <p>5 190 South LaSalle Street - Suite 3700</p> <p>6 Chicago, Illinois 60603</p> <p>7 (312) 499-0198</p> <p>8 Email: tealberty@duanemorris.com</p> <p>9 BY: TIFFANY ALBERTY, ESQUIRE</p> <p>10</p> <p>11 Also On behalf of the Defendant GEICO:</p> <p>12 DUANE MORRIS, LLP</p> <p>13 1540 Broadway - 14th Floor</p> <p>14 New York, New York 10036</p> <p>15 (212) 471-1856</p> <p>16 Email: gsslotnick@duanemorris.com</p> <p>17 BY: GREGORY SLOTNICK, ESQUIRE (Via Zoom)</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 SILVIO FACCHIN, Legal Video Specialist</p> <p>21 Esquire Deposition Solutions</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 THOMAS BARDEN</p> <p>2 Thursday, August 8, 2024</p> <p>3 Time: 9:59 a.m.</p> <p>4 Videotaped deposition of THOMAS BARDEN, held</p> <p>5 at Duane Morris, LLP, 1540 Broadway, 14th Floor,</p> <p>6 New York, New York, before Kim M. Brantley, Court</p> <p>7 Reporter and Notary Public of the State of New</p> <p>8 York.</p> <p>9</p> <p>10 APPEARANCES:</p> <p>11 On behalf of the Plaintiffs:</p> <p>12 OUTTEN &amp; GOLDEN, LLP</p> <p>13 1225 New York Avenue NW - Suite 1200B</p> <p>14 Washington, DC, 20007</p> <p>15 (202) 847-4400</p> <p>16 Email: hcolechu@outtengolden.com</p> <p>17 zdsouza@outtengolden.com</p> <p>18 BY: HANNAH COLE-CHU, ESQUIRE</p> <p>19 ZARKA SHABIR DSOUZA, ESQUIRE</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 THOMAS BARDEN</p> <p>2 P R O C E E D I N G S</p> <p>3 THE LEGAL VIDEO SPECIALIST: This is</p> <p>4 the media labeled number one in the video recorded</p> <p>5 deposition of Thomas Barden in the matter of Keith</p> <p>6 Fischer, et al., versus Government Employee</p> <p>7 Insurance Company, doing business as GEICO.</p> <p>8 This deposition is being taken in New</p> <p>9 York City, New York, on August 8th, 2024. My name</p> <p>10 is Silvio Facchin. I am a certified legal video</p> <p>11 specialist; the court reporter is Kim Brantley,</p> <p>12 and we're both representing Esquire Deposition</p> <p>13 Solutions.</p> <p>14 We are now going on the record. The</p> <p>15 time is 10:00 a.m.</p> <p>16 Counsel will state their appearances</p> <p>17 for the record.</p> <p>18 MS. COLE-CHU: For the plaintiffs,</p> <p>19 Hannah Cole-Chu, from Outten &amp; Golden, and</p> <p>20 with me is Zarka DSouza from Outten &amp; Golden</p> <p>21 as well.</p> <p>22 MS. ALBERTY: And Tiffany Alberty, on</p> <p>23 behalf of GEICO, along with Gregory Slotnick.</p> <p>24 THE LEGAL VIDEO SPECIALIST: Will the</p> <p>25 court reporter please swear in the witness.</p>

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<p style="text-align: right;">Page 25</p> <p>1 THOMAS BARDEN</p> <p>2 Q. When you resigned in December, were you</p> <p>3 still within that Albany territory?</p> <p>4 A. Yes.</p> <p>5 Q. During your time with GEICO, did you</p> <p>6 ever transition out of the Albany territory?</p> <p>7 A. No.</p> <p>8 Q. I believe in the complaint, in your</p> <p>9 declaration you described yourself as a special</p> <p>10 investigator. Is that the same as the field</p> <p>11 investigator position that we just spoke about?</p> <p>12 A. I believe field investigator is</p> <p>13 encompassed within all special investigators.</p> <p>14 Q. Would there be other titles then that</p> <p>15 you would anticipate or presume that are special</p> <p>16 investigators along with your field investigator</p> <p>17 position?</p> <p>18 MS. COLE-CHU: Objection.</p> <p>19 THE WITNESS: I would assume that there</p> <p>20 are other titles that people were given.</p> <p>21 BY MS. ALBERTY:</p> <p>22 Q. Do you know what those other titles</p> <p>23 would have been?</p> <p>24 A. I'm not sure what they would have been.</p> <p>25 Q. Okay. I believe you indicated a level</p>	<p style="text-align: right;">Page 27</p> <p>1 THOMAS BARDEN</p> <p>2 A. Yes.</p> <p>3 Q. And who was that?</p> <p>4 A. Craig Costanzo.</p> <p>5 Q. How long did that occur for?</p> <p>6 A. Three to four months.</p> <p>7 Q. So if my math serves me right, then</p> <p>8 that would have been between September of 2019 to</p> <p>9 about end of December of 2019 into January of 2020</p> <p>10 that you would have shadowed Craig Costanza (sic)?</p> <p>11 A. Yes.</p> <p>12 Q. What were the requirements for your</p> <p>13 position?</p> <p>14 MS. COLE-CHU: Objection.</p> <p>15 THE WITNESS: Requirements? As far as?</p> <p>16 BY MS. ALBERTY:</p> <p>17 Q. You know, if there was any type of</p> <p>18 education requirements --</p> <p>19 A. Oh.</p> <p>20 Q. -- any experience requirements.</p> <p>21 A. I'm not sure what their requirements</p> <p>22 were.</p> <p>23 Q. Do you know if there was a level</p> <p>24 sixty-six field investigator role at GEICO?</p> <p>25 A. I don't know.</p>
<p style="text-align: right;">Page 26</p> <p>1 THOMAS BARDEN</p> <p>2 sixty-five special investigator. What does that</p> <p>3 mean?</p> <p>4 A. Basically the level I was assigned to.</p> <p>5 I'm not sure what that level indicates.</p> <p>6 Q. Okay. Were you ever any other level</p> <p>7 while you were with GEICO?</p> <p>8 A. No.</p> <p>9 Q. As the -- as the field investigator,</p> <p>10 what were your duties and responsibilities?</p> <p>11 A. We were --</p> <p>12 MS. COLE-CHU: Objection. Sorry.</p> <p>13 THE WITNESS: We were assigned auto</p> <p>14 fraud investigative cases. So our job was to</p> <p>15 investigate the fraud that was indicated.</p> <p>16 BY MS. ALBERTY:</p> <p>17 Q. And that would have been within that</p> <p>18 Albany territory that you told me about?</p> <p>19 A. Yes.</p> <p>20 Q. Did you supervise anyone?</p> <p>21 A. No.</p> <p>22 Q. Did anyone shadow you?</p> <p>23 A. No.</p> <p>24 Q. When you first started, did you shadow</p> <p>25 anyone?</p>	<p style="text-align: right;">Page 28</p> <p>1 THOMAS BARDEN</p> <p>2 Q. Fair to say because you were a level</p> <p>3 sixty-five, that's the only knowledge that you</p> <p>4 have about that position is within that level</p> <p>5 base, correct?</p> <p>6 MS. COLE-CHU: Objection.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MS. ALBERTY:</p> <p>9 Q. As a senior field investigator, what</p> <p>10 were your hours?</p> <p>11 MS. COLE-CHU: Objection.</p> <p>12 THE WITNESS: Hours were basically</p> <p>13 eight hours a day.</p> <p>14 BY MS. ALBERTY:</p> <p>15 Q. Were they set times?</p> <p>16 A. When I was hired, I was told that our</p> <p>17 hours were flexible so that we could adjust to</p> <p>18 whatever is required during the day regarding</p> <p>19 in-person interviews, scene canvasses, EUOs that</p> <p>20 had to be done, things likes that, so that we</p> <p>21 could adjust our schedule according to that.</p> <p>22 Q. Did you say EUOs?</p> <p>23 A. Examinations under oath.</p> <p>24 Q. Okay, thank you.</p> <p>25 A. Sorry.</p>

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3 BY MS. ALBERTY:

4 Q. Fair to say then you're assuming that

5 from July or August of 2020 up and until December

6 of '22 that you exceeded your forty-hour work week

7 between fifteen to twenty hours, right?

8 MS. COLE-CHU: Objection.

9 THE WITNESS: I'm not assuming. I know

10 I did.

11 BY MS. ALBERTY:

12 Q. But you didn't itemize it?

13 A. I did not write it down and itemize

14 every minute, no.

15 Q. Did you tell anyone that you were

16 working approximately fifty-five to sixty hours a

17 week during that time, and by this time I'm

18 talking around the July time period?

19 A. We had meetings with supervisors and

20 discussed the time that we were actually putting

21 into cases, and how much time we were spending

22 working off the clock, yes.

23 Q. How -- it's hard, because we're working

24 in a few different time periods, right?

25 So, for -- let's start COVID 2020,

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2 March --

3 A. Mm-hmm.

4 Q. How frequent were meetings occurring?

5 A. I believe he -- meaning Mr. Janik --

6 tried to have a complete team meeting with

7 everyone quarterly. So every two to three months,

8 he would travel, we would meet. This is prior

9 to -- obviously prior to March. After that it

10 would be either Zoom, or a conference call, or

11 things like that. He would try to do it that way.

12 Q. Sure, but still under that time

13 condition of quarterly, regardless of the forum?

14 A. I -- I believe, from what I understand,

15 that was his schedule to do that. That was his

16 requirement to do that, yes.

17 Q. Do you recall any of these quarterly

18 meetings being in person?

19 A. Not -- at that time, once we were

20 allowed to meet again, yes, then we had meetings

21 in person again.

22 Q. Do you remember when that occurred in

23 time?

24 A. I don't remember the dates.

25 They -- I remember traveling to

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2 Syracuse, Weedsport, which is the other side of

3 Syracuse, having in-person meetings with Mr. Janik

4 and other team members at that time.

5 Q. To the best of your recollection do you

6 remember if that happened in '21 or '22?

7 A. I don't remember when we were opened

8 back up to do that.

9 Like I said, it went -- you know, the

10 opening of COVID went in steps, as everybody

11 knows. We were allowed to go out on the road and

12 do scene canvasses, but not allowed to meet with

13 people. Once we were allowed to meet with people

14 again, then we started having meetings again.

15 So -- and I'm not sure what that time frame is, to

16 be honest with you.

17 Q. All right, transitioning to number

18 nine, you state, "GEICO returned to limited field

19 operations in or about the November 2021 time

20 frame."

21 What does that mean? What does

22 "limited field operations" mean?

23 A. Just -- just, like I just said, we were

24 allowed to do scene canvasses, you know, things

25 that didn't take interaction with public

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2 basically.

3 We weren't -- we still weren't allowed

4 to do interviews in person with claimants, things

5 like that, but we were allowed to at least go on

6 the road and do scene canvasses.

7 I think we were allowed to go to

8 certain police agencies that were allowed --

9 allowing us to come there, pick up police reports,

10 and that depended on the areas, things like that,

11 so.

12 Q. Did you ever go back to the one hundred

13 percent of being able to do your position like it

14 was in 2020, January 2020?

15 A. It did expand as we went through. We

16 were allowed to meet with -- with claimants and

17 interview them in person again. So I am guessing,

18 yeah, probably.

19 I never went back to meeting them in

20 their homes. I always met them at a remote

21 location, but -- and I think most everybody else

22 did that same thing. But, yeah, it eventually got

23 back to where we were meeting people in person,

24 doing in-person interviews.

25 We never went back as far as when I

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<p>1 THOMAS BARDEN</p> <p>2 accurately and correctly?</p> <p>3 MS. COLE-CHU: Objection.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MS. ALBERTY:</p> <p>6 Q. Do you know what would happen once you</p> <p>7 had reported it, where it went then thereafter?</p> <p>8 A. It's -- far as I know it stayed within</p> <p>9 that system.</p> <p>10 Q. Do you know if anybody would review it?</p> <p>11 A. Yes.</p> <p>12 Q. And who was that?</p> <p>13 A. Mr. Janik.</p> <p>14 Q. Anyone else, to your knowledge?</p> <p>15 MS. COLE-CHU: Objection.</p> <p>16 THE WITNESS: Not that I know of.</p> <p>17 BY MS. ALBERTY:</p> <p>18 Q. Did you keep any separate personal</p> <p>19 system that helped maintain your task list for</p> <p>20 your cases, outside of the GEICO software we just</p> <p>21 talked about?</p> <p>22 A. Not that I recall, no.</p> <p>23 Q. Other than this GEICO software, was</p> <p>24 there any other records that you created in any</p> <p>25 other capacities, so whether that was in Microsoft</p>	<p>1 THOMAS BARDEN</p> <p>2 recall how many days GEICO would give you as a</p> <p>3 field investigator to investigate a claim?</p> <p>4 A. Yeah, I don't recall at this point.</p> <p>5 No.</p> <p>6 Q. Okay, let's turn to number thirteen.</p> <p>7 It says, "GEICO's performance metrics and ratings</p> <p>8 determined whether I was entitled to an annual</p> <p>9 raise.</p> <p>10 "If I failed to meet them they could</p> <p>11 also lead to disciplinary action such as being put</p> <p>12 on a coaching plan that will eventually lead to</p> <p>13 termination."</p> <p>14 What's your basis for believing that</p> <p>15 disciplinary action at GEICO was based on the</p> <p>16 performance metrics that you line itemized in</p> <p>17 number twelve?</p> <p>18 MS. COLE-CHU: Objection.</p> <p>19 THE WITNESS: Well, because I was -- I</p> <p>20 was contacted at one point by Mr. Janik who</p> <p>21 told me that I didn't actually meet criteria</p> <p>22 for a raise at that particular time during</p> <p>23 the year, and it was due to my performance</p> <p>24 evaluation.</p> <p>25 BY MS. ALBERTY:</p>
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<p>1 THOMAS BARDEN</p> <p>2 Word, Power Point.</p> <p>3 I don't know how software efficient you</p> <p>4 are, but anything else that would keep records of</p> <p>5 how much work you completed each day?</p> <p>6 A. Not that I recall, no.</p> <p>7 Q. And case reports, were those a part of</p> <p>8 your job duties?</p> <p>9 A. Yes.</p> <p>10 Q. And these various task items such as</p> <p>11 witness interviews, canvassing a scene, obtaining</p> <p>12 a police report, were those a part of your duties</p> <p>13 and responsibilities, insuring completing your</p> <p>14 auto theft cases?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know how long GEICO would give</p> <p>17 you to investigate a case?</p> <p>18 MS. COLE-CHU: Objection.</p> <p>19 THE WITNESS: I'm not -- I don't</p> <p>20 recall.</p> <p>21 BY MS. ALBERTY:</p> <p>22 Q. Was one of the things in the</p> <p>23 performance metrics for number twelve you indicate</p> <p>24 it's "how many days I took to close out a case."</p> <p>25 So as you sit here today, you don't</p>	<p>1 THOMAS BARDEN</p> <p>2 Q. When you were ineligible for a raise,</p> <p>3 did he, for example, specifically say, "Hey, on</p> <p>4 the Smith matter I notice you didn't go out and</p> <p>5 canvas the scene. So because you didn't hit that</p> <p>6 performance metric for that case, this is one of</p> <p>7 the reasons why you're ineligible for a raise"?</p> <p>8 MS. COLE-CHU: Objection.</p> <p>9 BY MS. ALBERTY:</p> <p>10 Q. Was it ever that specific?</p> <p>11 A. I don't believe it was conveyed in that</p> <p>12 specific content.</p> <p>13 Q. Do you recall if there was any type of</p> <p>14 written policy that stated that the metrics were</p> <p>15 linked to discipline?</p> <p>16 A. Well, I know I got put on, excuse me,</p> <p>17 on a coaching plan because of poor performance. I</p> <p>18 don't recall at this time if it was directly</p> <p>19 related to a performance rating, or if it was just</p> <p>20 simply an overall -- you know, like a specific</p> <p>21 performance rating period is what I mean, or if it</p> <p>22 was just kind of an ongoing supervisory notation</p> <p>23 or they noticed happening.</p> <p>24 Q. When you were put on your coaching, was</p> <p>25 it specifically itemized that, for example, you</p>

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<p>1 THOMAS BARDEN</p> <p>2 investigator employee to complete certain tasks on</p> <p>3 new cases such as conducting background checks and</p> <p>4 other initial steps for a case.</p> <p>5 "This gave me time to catch up on my</p> <p>6 existing cases and close them more quickly,</p> <p>7 although I was working the same number of hours,</p> <p>8 but to the best of my knowledge GEICO did not</p> <p>9 ultimately continue this program for special</p> <p>10 investigators."</p> <p>11 What is your basis for believing that</p> <p>12 GEICO implemented a pilot program like this?</p> <p>13 A. That's what was told to me by Bill</p> <p>14 Newport and Chet Janik.</p> <p>15 Q. Was this during the initial phone call</p> <p>16 when you were placed on the coaching plan?</p> <p>17 A. I believe it was right around that</p> <p>18 time. It happened at sometime after that. It</p> <p>19 wasn't like something that happened immediately.</p> <p>20 Q. Paragraph fourteen seems to indicate</p> <p>21 that the pilot program was discontinued.</p> <p>22 What's your basis for believing that?</p> <p>23 A. From what I understand that was -- when</p> <p>24 I left that was when that program ended. That was</p> <p>25 what I understood when I left. Because I asked</p>	<p>1 THOMAS BARDEN</p> <p>2 A. I don't know.</p> <p>3 Q. And what did Marie do for you?</p> <p>4 A. Basically just the initial background</p> <p>5 investigation of -- of the initial claimant in the</p> <p>6 case.</p> <p>7 Q. Did you ever meet Marie in person?</p> <p>8 A. No.</p> <p>9 Q. Did you speak to her?</p> <p>10 A. I spoke to her on the phone</p> <p>11 occasionally.</p> <p>12 Q. Did she ever indicate to you that this</p> <p>13 was a temporary pilot program?</p> <p>14 A. I don't think so.</p> <p>15 Q. So ultimately Marie came in, and she</p> <p>16 was helping you with your duties in running</p> <p>17 background checks and the initial steps for your</p> <p>18 cases.</p> <p>19 Is that right?</p> <p>20 A. Correct.</p> <p>21 Q. And then these were tasks that you</p> <p>22 typically did in your custom and practice as a</p> <p>23 field security investigator?</p> <p>24 MS. COLE-CHU: Objection.</p> <p>25 THE WITNESS: Yes.</p>
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<p>1 THOMAS BARDEN</p> <p>2 Chet Janik when I left if they were going to</p> <p>3 continue that, and he said no, that was it.</p> <p>4 Q. When did this conversation occur?</p> <p>5 A. With my supervisor?</p> <p>6 Q. Yeah.</p> <p>7 A. When I had decided to leave the</p> <p>8 company.</p> <p>9 Q. Was there -- I'm trying to think in</p> <p>10 time. So it's December of '22 is when you quit.</p> <p>11 Was it the same time you tendered your</p> <p>12 resignation? Was it a separate conversation after</p> <p>13 that?</p> <p>14 A. I don't know if it was contiguous when</p> <p>15 I told him I was leaving. It may have been after</p> <p>16 that. I'm -- I'm not sure when that happened.</p> <p>17 Q. Who was --</p> <p>18 A. -- or when I asked him about that.</p> <p>19 Q. Who was the person that was assigned to</p> <p>20 you?</p> <p>21 MS. COLE-CHU: Objection.</p> <p>22 THE WITNESS: I believe her name was</p> <p>23 Marie, I believe.</p> <p>24 BY MS. ALBERTY:</p> <p>25 Q. Do you know what her title was?</p>	<p>1 THOMAS BARDEN</p> <p>2 BY MS. ALBERTY:</p> <p>3 Q. How long was Maria assigned to you?</p> <p>4 A. I don't recall.</p> <p>5 Q. Was she still working with you in</p> <p>6 December when you left?</p> <p>7 A. She was still there. I don't recall if</p> <p>8 she was still doing that with my cases when I</p> <p>9 resigned.</p> <p>10 Q. If the coaching took place, and it was</p> <p>11 only supposed to last two or three months, and it</p> <p>12 took place in the spring or the summer of '22, it</p> <p>13 then in theory would have been phased out by the</p> <p>14 fall?</p> <p>15 Did you ever have a subsequent</p> <p>16 conversation with Bill or with Chet that now</p> <p>17 you've been removed off the coaching plan?</p> <p>18 A. I don't recall if I did or not. I</p> <p>19 don't recall that conversation, if it happened.</p> <p>20 Q. Is it your understanding that you were</p> <p>21 still then on this coaching plan until the end of</p> <p>22 your employment?</p> <p>23 A. No, I don't believe so.</p> <p>24 Q. So you --</p> <p>25 A. I just don't recall the conversation</p>

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2                                C E R T I F I C A T E  
3        STATE OF NEW YORK        )  
4                                : Ss.  
5        COUNTY OF NEW YORK       )  
6                                I, Kim M. Brantley, Shorthand  
7        Reporter, and Notary Public within and for the  
8        State of New York, do hereby certify:  
9                                That THOMAS BARDEN, the witness whose  
10       deposition is hereinbefore set forth, was duly  
11       sworn by me and that such deposition is a true  
12       record of the testimony given by the witness.  
13                               I further certify that I am not related  
14       to any of the parties to this action by blood or  
15       marriage, and that I am in no way interested in  
16       the outcome of this matter.  
17                               IN WITNESS WHEREOF, I have hereunto set  
18       my hand this 11th day of August, 2024.  
19                                 
20                               \_\_\_\_\_  
21                               Kim M. Brantley  
22  
23  
24       My Commission expires May 31, 2026.  
25

